IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.604 OF 1999

Shri Vishwanath Krishnaji Ogale,
age 70 years, Occ. Pensioner,
Rtd. Deputy Director
R/at 1547, Sadashiv Peth,
Pune - 411 030. ....Petitioner.

V/s

The State of Maharahstra ...Respondent.

Mr. V G. Peshave for the petitioner.

Ms. M.M. Deshmukh, APP for the State.

CORAM: V.M. KANADE, J.

DATE: 12th January, 2006

ORAL JUDGMENT:

1. Heard the learned Counsel for the petitioner and the learned APP for the State.

2. This is an application for quashing the complaint filed by the complainant against the petitioner for having committed an offence punishable under section 409 of the Indian Penal Code.

3. It is alleged in the complaint that the petitioner was working as a Superintendent at the relevant time and that he had acted in a negligent manner and had not collected various amounts from the Small Scale

Industries and these amounts were not deposited in the Bank. After the statement of the complainant was recorded, the application was preferred by the petitioner seeking the discharge on various grounds. It was alleged that the complaint was filed after five years after his retirement. Secondly, it was alleged that the prior sanction for the prosecution had not been obtained and, therefore, the Court was not competent to take cognizance of the complaint.

4. The Trial Court rejected the said application. The Revision Application which was filed by the present petitioner was also rejected by the Sessions Court.

5. In the present case, the short question which falls for consideration is : whether it was essential for the complainant to obtain the sanction as required under section 197 of the Criminal Procedure Code?. Section 197 clearly contemplates that if any action is to be initiated against the public servant then prior sanction has to be obtained if the said act or omission is committed while acting or purporting to act in discharge of his official duty.

6. The statement of the complainant discloses that the new Scheme was evolved by the Government of Maharashtra for the purpose of giving some new facilities to the Small Scale Industries and pursuant to which the machinery could be given to them on rent. Further, such Industrialists were also given the benefit of providing for new designs for the purpose of prodcution of new machinery on the basis of the said new designs. For the said purpose, certain charges were prescribed under the Scheme. It is alleged by the complainant that the petitioner was working as a Superintendent during the period from 24/10/1975 to 10/06/1985 in the said Department and that he had misused his powers and had executed the work negligently and had performed his prescribed duties carelessly while giving these facilities to the Industrialists. According to the complainant, certain amounts were to be collected from the Industrialists and these amounts were not collected and deposited by the petitioner. The perusal of the statement clearly discloses that all the acts which are alleged to have been committed by the petitioner are during the discharge of his official duties and it is alleged that he had acted negligently while discharging his duties. Thus, in such circumstances, in my view, the provisions of section 197 are squarely attracted and

it was the duty of the complainant to have obtained prior sanction before filing the complaint. Section 197 has been incorporated with a view to give protection to the public servant against the malicious complaint being filed without proper authorization. The present complaint also appears to have been filed maliciously which can be seen from the fact that the complainant who was also working in the said Department had filed a complaint without obtaining proper sanction from the appointing authority and the complaint also was filed, admittedly, after five years after the petitioner had retired. The Sessions Court, in my view, has, therefore, clearly erred in not taking into consideration this aspect.

7. The judgement and order of the Trial Court as also the Sessions Court is, therefore, set aside. Criminal Complaint is quashed. Criminal Application is allowed in terms of prayer clause (a).

8. Criminal Application is accordingly disposed of.

V.M. KANADE, J.